

## **REMARK**

Applicant respectfully requests reconsideration of this application as amended. Claims 2, 4, 5, and 6 have been amended, and no claims have been canceled. Therefore, claims 1-6 are presented for examination.

### **35 U.S.C. §103 Rejection**

#### **Fisher et al. in view of Cooper**

The Examiner has rejected claims 1-6 under 35 U.S.C. §103(a) as being unpatentable over Fisher et al. (U.S. Patent No. 5,835,896), in view of Cooper ("Going going gone! Tradition gives way to technology", British Telecom World, March 1990).

The Applicant respectfully maintains his position that Fisher and Cooper do not individually, or in combination, teach or suggest the Applicant's invention as recited by claims 1-6.

#### **Fisher does not provide the motivation for combining with another reference**

To establish a prima facie case of obviousness, inter alia, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. (See MPEP §2143.)

Since Fisher lacks this suggestion or motivation, it is an improper reference for combining with Cooper to establish a proper §103 rejection.

While Fisher teaches an auction system, it teaches a multi-bidder, interactive auction without the use of a human auctioneer to conduct the auction (column 6, lines 4-5). Fisher exclusively targets an auction environment free from elements inherent in a live auction, such as an auctioneer, and the costs associated with running a live auction. (Column 5, lines 18-22, "...the electronic system is automatic and does not require a human auctioneer, thereby allowing many individual items to be auctioned during the same time period and providing a decrease in costs associated with running an auction.") Consequently, since Fisher teaches away from live auction environments, there would be no motivation to combine with Fisher with the teachings of a live auction environment such as Cooper.

Cooper does not teach those elements that are missing from Fisher

According to MPEP §2143, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Cooper does not teach, at the least, the following elements:

- Accepting a bid from an online bidder in the online environment reflecting the online bidder's maximum proxy price, as required by claims 1-6: Cooper does not teach or suggest the concept of proxy

pricing. Cooper teaches to the contrary, i.e., buyers who place their bids "as though they were in the Bond Street auction room itself...", rather than proxy buyers. (Cooper, p. 2, paragraph 10, lines 3-5).

- Bidding on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum proxy price, as required by claims 1-6: since Cooper does not teach proxy pricing, *supra*, Cooper does not teach bidding based upon a maximum proxy price.
- Establishing a starting bid for an item for a live portion of an auction by performing a pre-auction bidding process in an online environment, as required by claims 3-6: Cooper teaches a bidding environment that parallels a live auction environment (the system allows buyers to "compete with the live auction", Cooper, page 2, paragraph 10, lines 6-7). Cooper does not teach or suggest any pre-auction bidding process.
- Bidding against one or more live bidders that are present at the live auction portion of the auction until the maximum proxy price has been exceeded, or until no further live bids are received, as required by claims 4-6: since Cooper does not teach proxy pricing, *supra*, Cooper does not teach bidding until the maximum proxy price has been exceeded, or until no further live bids or received.

Since Cooper is missing at least these elements, Cooper cannot be used, individually or in combination with Fisher, to produce the Applicant's invention as recited by claims 1-6. Furthermore, even if Cooper could be combined with Fisher, who it cannot as explained above, Cooper does not teach or suggest those elements that are missing from Fisher, and Fisher does not teach or suggest those elements that are missing from Cooper.

For at least these reasons, the Applicant respectfully requests that the Examiner withdraw his objections to claims 1-6 and allow the claims as amended.

### **Conclusion**

Applicant respectfully submits that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicant respectfully requests the rejections be withdrawn and the claims as amended be allowed.

### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

### **Request for an Extension of Time**


The Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

### **Charge our Deposit Account**

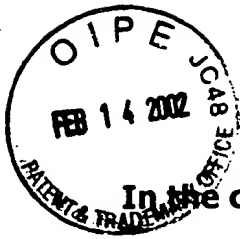
Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: Jan. 4, 2002

  
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## Version With Markings To Show Changes Made

### In the claims:

Presented below are the amended claims showing additions in underlined text, and deletions in brackets.

2. (Once Amended) The method of claim 1, wherein said bidding on behalf of the online bidder comprises bidding an amount that exceeds the current bid so long as the [maximum proxy price has not been exceeded] amount does not exceed the maximum proxy price, and so long as the current bid is not that of the online bidder.
4. (Once Amended) A method comprising:
  - establishing a starting bid for an item for a live portion of an auction by performing a pre-auction bidding process in an online environment for a predetermined amount of time;
  - communicating the starting bid for the item to the live portion of the auction; and
  - during the live auction portion of the auction
    - updating bidding information associated with the item in the online environment to reflect a current bid associated with the item in the live portion of the auction,
    - accepting a bid from an online bidder in the online environment

reflecting the online bidder's maximum proxy price, and  
bidding against one or more live bidders that are present at the live  
auction portion of the auction until one of:  
the maximum proxy price has been [met] exceeded; and  
no further live bids are received.

5. (Once Amended) A computer system comprising:

a storage device having stored therein a one or more routines for  
integrating an online bidding process with a live portion of an  
auction;

a processor coupled to the storage device for executing the one or more  
routines to provide feedback to online bidders in an online  
environment during the live portion of the auction and serve as a  
proxy bidder for the online bidders, where:

a starting bid is established for an item for the live portion of the  
auction by performing a pre-auction bidding process in the  
online environment for a predetermined amount of time;

feedback is provided to the online bidders by updating bidding  
information associated with the item in the online  
environment to reflect a current bid associated with the item  
during the live portion of the auction, and

proxy bidding is accomplished by accepting a bid from one or more of the online bidders reflecting the online bidders' maximum proxy price and bidding on behalf of the one or more online bidders against one or more live bidders participating in the live portion of the auction until the occurrence of one of:

each of the one or more online bidders' maximum proxy price has been [met] exceeded; and

no further live bids are received.

6. (Once Amended) A machine-readable medium having stored thereon data representing sequences of instructions, the sequences of instructions which, when executed by a processor, cause the processor to perform the steps of:

establishing a starting bid for an item for a live portion of an auction by performing a pre-auction bidding process in an online environment for a predetermined amount of time;

communicating the starting bid for the item to the live portion of the auction; and

during the live auction portion of the auction

updating bidding information associated with the item in the online environment to reflect a current bid associated with the item



in the live portion of the auction,

accepting a bid from an online bidder in the online environment

reflecting the online bidder's maximum proxy price, and

bidding against one or more live bidders that are present at the live

auction portion of the auction until one of:

the maximum proxy price has been [met] exceeded; and

no further live bids are received.